

SPECIAL CIVIL APPLICATION NO 5105 OF 1987.

Date of Decision: 23.11.1995

FOR APPROVAL AND SIGNATURE

THE HON'BLE MR. JUSTICE N N MATHUR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge ?

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Mr G R Sheikh, Advocate for the petitioner
Mr Pandya, AGP for the State

CORAM : N N MATHUR, J.
(November 23, 1995)

ORAL JUDGMENT

Leave to add the Collector, Junagadh as party respondent.

The contention raised in this Special Civil Application is that the impugned order of the Collector, Junagadh in purported exercise of powers under section section 258 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as the Act of 1963) is illegal being without authority of law, inasmuch as the Resolution dated 31.1.1986 whereby the Veraval-Patan, a Joint Municipality resolved to grant land admeasuring 542.10

sq.mts. of Ward No.5 was carried out before passing of the impugned order by the Collector dated 31.1.1986.

2. In support of the contention of the petitioner reliance was placed on decisions of this Court in the case of H H PARMAR V. COLLECTOR, RAJKOT & anr, reported in XX (2) GLR 97, in the case of DASA SORATHIYA VANIK GNATI v. STATE OF GUJARAT, reported in XIX GLR 1001 and in the case of RAGHAVBHAI v. AMRELI NAGARPALIKA, reported in 1994 (2) GLR 1117. It is not in dispute that before invoking the provisions of section 258 of the Act of 1963, by the Collector, by the impugned order, the Resolution was carried out and the possession of the land was delivered, and therefore. nothing remained for execution.

3. Mr Pandya, learned AGP submits that the petitioner cannot be permitted to raise this contention as the same was not raised before the State. There is no merit in this contention, as the contention raised is a question of jurisdiction, and therefore, that can be raised for the first time in a writ petition.

4. In view of the aforesaid, this Special Civil Application is allowed and the impugned order of the Collector dated 13.11.1986 and the order the Secretary, Urban Development and Rural Housing Department dated 13.8.1987 are quashed and set aside.

Rule made absolute accordingly. There shall be no order as to costs.

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